REMEDIATION AND REDEVELOPMENT (RR) NEWS FROM WISCONSIN DNR

Proactive Case Closures, Operation and Maintenance Forms:

The Remediation and Redevelopment (RR) Program has initiated a "proactive" approach to site closure in response to the Legislative Audit Bureau's PECFA audit report. Proactive closure means that DNR will send notices to responsible parties, with copies to the consultant and to the Department of Commerce, whenever site data shows that closure may be feasible, even if a closure request has not been received. The notices recommend that a closure request and its supporting data be submitted. Notices will also inform site owners that continued PECFA eligibility will be reviewed by Commerce if the recommended closure request is not received. Proactive closure also means that DNR will inform responsible parties that a site may be closed with a deed instrument, even if a deed instrument has not been requested. In addition, DNR will inform responsible parties when it appears that an engineered remediation system can be shut down for evaluation of natural attenuation.

DNR will use the operation and maintenance forms (form 4400-194), and all other data submittals, to determine when closure appears to be feasible and a proactive closure notice will be sent. The forms include general site information, with a selection of specific forms for different types of remedial actions. The forms are available on the Technical Assistance page of the RR program web site:

http://www.dnr.state.wi.us/org/aw/rr

or by calling 608-264-6020. Wisconsin Administrative Code NR 724.13(3)(e)requires submittal of these forms every six months for sites with engineered remediation systems, and annually for sites using natural attenuation. Unless directed otherwise by a DNR project manager, these forms and the supporting data should be submitted each six or twelve months in lieu of quarterly progress reports on site cleanup.

COM 46 Promulgated; Risk Protocols Developed

On January 27, 1999 the Natural Resources Board approved COM 46, the same PECFA emergency rule that has been promulgated by the Department of Commerce. This rule was developed by the Departments of Administration, Natural Resources and Commerce to codify the jurisdiction of sites between Commerce and DNR, and to set a framework for a more risk based approach to PECFA site cleanups. COM 46 establishes that sites with groundwater contamination below the enforcement standard in NR 140 are under the jurisdiction of the Department of Commerce.

Although not promulgated by rule, the agencies have also agreed to a site risk protocol, which DNR will apply on a case by case basis. The risk protocol depends on a site investigation that meets the requirements of NR 716. The RR program will include sites that fall within the risk protocol among proactive case closures. The risk protocol is as follows:
For All PECFA Sites:

- Closure of sites with contamination below the enforcement standard (ES) in NR 140, Groundwater Quality
 - Off site contamination levels must be below the ES, even when a natural attenuation closure has been approved, when responsible parties can not obtain a groundwater use restriction from off site property owners.
- Sites in non-developable groundwater that meet certain parameters (to be defined) will be closed. Non-developable groundwater is defined as yielding less that 0.1 gallons per minute (excluding bedrock) from an open borehole.
- When closing sites, direct contact exposure values will apply to soils in the first four feet of soil below the surface. Deeper soils that exceed direct contact exposure values may require a deed instrument in order to protect against future exposures if the soils are excavated.

For Clay Sites: The definition of clay sites, in the May 8, 1998 Memorandum of Understanding between the DNR and Commerce, is as follows: "A site with fine-grained soils, for a depth of 3 meters or more, where the soils have an in-situ hydraulic conductivity of 10-6 centimeters per second; the site does not contain deposits of laterally extensive coarse grained materials, and the site does not contain utility trenches, areas of gravel backfill or fractures in the clay, which would act as contaminant migration pathways." The risk protocol under which clay sites may be closed without further evaluation of natural attenuation include the following two factors for all clay sites:
1. The NR 716 site investigation has been adequate to determine whether there are ES exceedences in any underlying developable groundwater, and
2. No environmental factors are present. Environmental factors are defined in COM 47 and include:

a - Documented expansion of the plume margin
b - Contamination in water supply wells exceeding the preventive action level
c - Contamination within bedrock or within one meter of bedrock
d - Petroleum product of more than .01 foot depth
e - Contaminant discharge to a surface water or wetland

Closure of clay sites meeting the above two conditions can take place when:
- There are no ES exceedences and there is at least one meter of uncontaminated soil above the top of the non-developable groundwater.
- ES exceedences are contained within the property boundary, do not exceed 30 times the enforcement standard, and the contaminant concentrations in soil decrease with depth.
- For sites with ES exceedences that exceed 30 times the enforcement standard within the property boundary, the remedial target is 30 times the enforcement standard within the property boundary, with no ES exceedences outside of the property boundary.

DNR may also consider closure of sites with ES exceedences of more than 30 times the ES within the property boundary, on a site specific basis. DNR realizes that there will be technical questions on implementation of the protocol, and will provide further guidance.

Case Closure Reconsideration

The RR program has formalized a "Process for Reconsideration of Case Closure Requests". The process includes three steps for people to follow if they believe a DNR closure determination merits reconsideration. DNR expects that these steps will be used primarily by responsible parties who did not receive a requested case closure, but anyone else (e.g. a neighbor) may also use the process to request that DNR reconsider a closure determination.
The three steps are:

1. Call the DNR staff person who reviewed the closure request and state your reasons for requesting reconsideration, including any new information about the site. The DNR representative should explain the basis for the closure determination and respond directly to issues identified by the caller. If the DNR representative, or the regional closure committee, does not agree to reconsider the case and the caller is not satisfied, the caller may proceed to the next step.

2. In step two the caller should contact the regional team supervisor for the RR program. DNR supervisors and technical contacts are listed on the RR program web page at: http://www.dnr.state.wi.us/org/aw/rr on the technical assistance page. The supervisor will listen to the caller's concerns, discuss those concerns with staff (and closure committee if relevant), and call back to say that either the case will be reconsidered or the original determination has not been changed.

3. If the caller is not satisfied with the reasons given after step two, step three is to notify the RR supervisor that the regional Air & Waste Leader is to be contacted. The Air and Waste Leader may either uphold the original determination or direct the closure committee to re-evaluate the case. If the caller is not satisfied at this step, DNR will issue a formal "findings of fact/conclusions of law" letter. The letter will summarize the case closure determination and will include a notice of appeal rights for a contested case hearing or for judicial review.